

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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INDEPENDENT BANK,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 21, 2014

v

No. 314894  
Grand Traverse Circuit Court  
LC No. 2012-029424-CK

SHERMAN A. BAARSTAD and GWENDOLYN  
BAARSTAD,

Defendants,

and

RICHARD C. NELSON and  
ANN ELLINGSON,

Defendants-Appellants.

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Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Appellants appeal from an order of the circuit court granting summary disposition in favor of plaintiff. We affirm.

In 2006 and 2007, appellee made loans of \$286,400 and \$550,000 to Fuller Lake Development, L.L.C. (Fuller), a Michigan limited liability company. The loans, which were to be used to develop a condominium project in Lake Ann, Michigan, were guaranteed by appellants and defendants, Sherman Baarstad and Gwendolyn Baarstad. Appellant Richard Nelson is a resident of Illinois and signed the guarantees there. Appellant Ann Ellingson is a resident of California and signed the guarantee there. Appellants are both members of Almira Properties, L.L.C. (Almira), a Michigan limited liability company, which, in turn, is the sole member of Fuller. Nelson and Ellingson each purchased a condominium in the Fuller Lake Development Project and have visited Michigan.

When Fuller defaulted on the loans, appellee sued to collect on the personal guarantees.

Appellee thereafter filed a motion for summary disposition. Appellants claimed that the court lacked personal jurisdiction over them. The trial court held that there were sufficient minimum contacts for the court to exercise jurisdiction over appellants because each had signed a guarantee with a Michigan bank, purchased a condominium in Michigan using the loan money

that is the subject of this dispute, formed a Michigan L.L.C. with another company, and owned property in Michigan. After concluding that it had jurisdiction over the appellants, the trial court granted appellee's motion for summary disposition.

On appeal, appellants argue that the trial court erred because Michigan the court lacked personal jurisdiction over them. We disagree.

There is a two step analysis to determining if Michigan courts have personal jurisdiction over a defendant. "First, [the defendant's] conduct must fall within a provision of Michigan's long-arm statutes. Second, the exercise of jurisdiction must comport with due process." *Green v Wilson*, 455 Mich 342, 351; 565 NW2d 813 (1997).

Pursuant to MCL 600.705(1), Michigan courts have jurisdiction if the lawsuit concerns a defendant's "transaction of any business within the state." The Michigan Supreme Court has interpreted this phrase broadly, finding that "'any' means just what it says, it includes 'each' and 'every.' It comprehends 'the slightest.'" *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971).

To meet due process requirements, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v Denckla*, 357 US 235, 253; 78 S Ct 1228; 2 L Ed 2d 1283 (1958). A defendant has "purposefully availed" himself of the benefits and protections of a state if he "'deliberately' has engaged in significant activities within a State, or has created 'continuing obligations' between himself and residents of the forum . . . ." *Starbrite Distrib, Inc v Excelda Mfg Co*, 454 Mich 302, 309; 562 NW2d 640 (1997), quoting *Burger King Corp v Rudzewicz*, 471 US 462, 475-476; 105 S Ct 2174; 85 L Ed 2d 528 (1985) (emphasis in *Starbrite*). This requirement ensures that a state will not have jurisdiction over a defendant based on "fortuitous" or "random" contacts. *Burger King*, 471 US at 475.

Furthermore, the cause of action must arise from the defendant's activities in the state, and it must be reasonable for Michigan to exercise jurisdiction over the defendant. *Starbrite*, 454 Mich at 309. When determining whether jurisdiction is reasonable, a court must consider "the burden on the defendant, the interests of the forum State, . . . the plaintiff's interest in obtaining relief, . . . 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies[,] and the shared interest of the several States in furthering fundamental substantive social policies.'" *Asahi Metal Indus Co, Ltd v Superior Court of California, Solano Co*, 480 US 102, 113; 107 S Ct 1026; 94 L Ed 2d 92 (1987), quoting *World-Wide Volkswagen Corp v Woodson*, 444 US 286, 292; 100 S Ct 559; 62 L Ed 2d 490 (1980). However, "where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King*, 471 US at 477.

Appellants' contacts satisfy the requirements of Michigan's long-arm statute. In *Lazzaro v Charlevoix Lakes*, 108 Mich App 120, 127-128; 310 NW2d 295 (1981), this Court held that Michigan's long-arm statute conferred jurisdiction over two Ohio citizens who guaranteed a loan from a Massachusetts bank for an Ohio corporation to develop condominiums in Michigan. In

this case, appellants had even more contacts with the state, as they guaranteed loans from a *Michigan* bank to a *Michigan* corporation, which were used to develop condominiums in Michigan. Therefore, the statutory requirement of personal jurisdiction is met.

Due process is also satisfied. Appellants argue that they originally bought shares in an Illinois L.L.C. and that only as a result of “fortuitous” or “random” events did they come in contact with Michigan. Appellants’ position is inconsistent with the evidence that they deliberately chose to form a Michigan L.L.C. to buy a Michigan golf course, and, more importantly, that they personally guaranteed loans from a Michigan bank to that Michigan L.L.C. Thus, appellants deliberately chose to create contacts with Michigan and therefore purposefully availed themselves of its benefits and protections. And because appellee seeks repayment on the loan to Fuller that appellants guaranteed, the cause of action arises from these contacts.

Finally, it is reasonable for Michigan to exercise jurisdiction over these appellants. Appellants have each visited Michigan, showing that it is not a significant burden on them to come to the forum state. Furthermore, since they do not dispute that they owe appellee monies on the basis of their guarantees, there is no burden of conducting a trial out of their home states. Michigan also has a strong interest in hearing this case because it involves a Michigan company owing a large sum of money to a Michigan bank. And appellee has an interest in having the issue adjudicated where the bank is headquartered. Conversely, California and Illinois have very little interest in this suit, as it does not involve their property or banks. Additionally, trying both appellants in Michigan is more efficient than if plaintiff had to file two separate suits in their home states.

Affirmed. Appellee, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Amy Ronayne Krause